

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF COMMERCE

In the Matter of International Collection
Services, Inc.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a Pre-Hearing Conference before Administrative Law Judge Eric L. Lipman on June 29, 2009, at the Saint Paul offices of the Office of Administrative Hearings.

Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). Timothy D. Webb, Attorney at Law, appeared on behalf of International Collection Services, Inc.

STATEMENT OF THE ISSUES

1. Whether the Respondent, by failing to remit contracted amounts to clients within thirty days from collection, violated Minn. Stat. § 332.37 (8) (2008)?
2. Whether the Respondent, by using customer funds in the conduct of the agency's business, violated Minn. Stat. § 332.37 (10) (2008)?
3. Whether the Respondent, by refusing to grant the Department access to its papers, violated Minn. Stat. § 45.027, subd. 1(5) and 332.33, subd. 4 (2008)?
4. Whether the Respondent, has demonstrated untrustworthiness and financial irresponsibility in violation of Minn. Stat. § 45.027, subd. 7(4) (2008)?

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On June 9, 2009, a Notice of and Order for Hearing, Order to Show Cause, Order for Summary Suspension and Statement of Charges (Notice of and Order for Hearing) in this matter was served upon International Collection Services, Inc., at its offices in Bloomington, Minnesota.¹

¹ See, Affidavit of Michael J. Kaehler, at 1 (June 9, 2009).

2. Pursuant to a stipulation between the parties, it was agreed that International Collection Services, Inc. would not contest any of the factual claims made in the Statement of Charges but would be permitted to make argument to the Commissioner as to the appropriate sanction to be imposed for its regulatory lapses.

3. The Statement of Charges alleges that:

- (a) The Respondent is currently licensed as a debt collector by the Department, License No. CA20468219.
- (b) The Department received complaints from two out-of-state companies who are clients of the Respondent indicating that they had not received money owed to them after Respondent had collected on accounts due.
- (c) The Department further conducted an audit of the Respondents trust and operating account bank records received through an administrative subpoena which revealed that Respondent has misappropriated in excess of \$125,000 from his clients within the past three years, of which \$63,250 was transferred from a trust account to an operating account then transferred out to pay a credit line of the Respondent's in March 2008.
- (d) Additionally, the Respondent used these funds from the trust account to pay off personal items on his credit card. The Respondent used a \$35,000 credit line to attempt to cover some of the short falls in the trust account.
- (e) Judgment creditors further garnished \$8,877.43 from the Respondent's trust account in June 2008. Respondent did not replace the \$8,877.43 garnished trust funds with funds from the operating account.
- (f) The Respondent also refused the Department access to his place of business to further conduct an examination of the business' records.

4. The allegations contained in the Statement of Charges are deemed proven and are incorporated into these Findings by reference.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027 and 332.40.

2. Based upon the facts set forth in the statement of charges, and the stipulation of counsel, Respondent, by failing to remit contracted amounts to clients within thirty days from collection, violated Minn. Stat. § 332.37 (8) (2008).

3. Based upon the facts set forth in the statement of charges, and the stipulation of counsel, Respondent, by using customer funds in the conduct of the agency's business, violated Minn. Stat. § 332.37 (10) (2008).

4. Based upon the facts set forth in the statement of charges, and the stipulation of counsel, Respondent, by refusing to grant the Department access to its papers, violated Minn. Stat. § 45.027, subd. 1(5) and 332.33, subd. 4 (2008).

5. Based upon the facts set forth in the statement of charges, and the stipulation of counsel, Respondent demonstrated untrustworthiness and financial irresponsibility in violation of Minn. Stat. § 45.027, subd. 7(4) (2008).

6. The imposition of disciplinary sanctions against Respondent is in the public interest.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge respectfully RECOMMENDS that the Commissioner of the Minnesota Department of Commerce revoke Respondent's debt collector license (License No. CA20468219) and impose a civil penalty of \$7,500 for each of the four regulatory violations.

Dated: July 14, 2009

/s/ Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

Reported: Digital Recording
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Glenn Wilson, Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, or call the Department at (651) 651-296-4026, to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

Mindful of the Commissioner's final determination in *The Matter of the Debt Collector's License of Robin Lynn Davis, License No. 20044731*,² the Commissioner is urged to both revoke the Respondent's debt collector license and apply a weighty monetary sanction to punish the misconduct of its corporate officers.

In comparison to the facts upon which the Commissioner grounded his final determination in *Davis*, the Respondent's course of misconduct in this case was longer in duration, greater in overall financial impact and more destructive to the debt collection industry in Minnesota.³

E. L. L.

² *In the Matter of the Debt Collector's License of Robin Lynn Davis, License No. 20044731*, Commerce File No. CA260325/KRJ (October 19, 2006) (<http://www.oah.state.mn.us/aljBase/final/100217276.pdf>).

³ See, *In the Matter of the Debt Collector's License of Robin Lynn Davis, License No. 20044731*, OAH Docket No. 11-1002-17276-2 (2006) (<http://www.oah.state.mn.us/aljBase/100217276.dflt.rt.htm>) and Commerce File No. CA260325/KRJ (2006) (<http://www.oah.state.mn.us/aljBase/final/100217276.pdf>).